

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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USCA Docket Number:

USDC Docket Number : 04-cv-10751

Stacey Stanton

v.

Metro Corp.,

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**CLERK'S CERTIFICATE**

I, Sarah A Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 4/6/05.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on April 13, 2005.

Sarah A. Thornton, Clerk of Court

By: *Jeanette Ramos*  
Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled  
case is hereby acknowledged this date: 4/14/05.

*D. Barchas*  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

[cv: apprec.] [cr: kapprec.]

APPEAL

**United States District Court  
District of Massachusetts (Worcester)  
CIVIL DOCKET FOR CASE #: 4:04-cv-10751-FDS**

Stanton v. Metro Corp.  
Assigned to: Judge F. Dennis Saylor, IV  
Cause: 28:1332 Diversity-Notice of Removal

Date Filed: 04/13/2004  
Jury Demand: Defendant  
Nature of Suit: 320 Assault Libel  
& Slander  
Jurisdiction: Diversity

**Plaintiff**

**Stacey Stanton**

represented by **John P. Donohue**  
Fuller, Rosenberg, Palmer &  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Metro Corp.**

represented by **David E. Plotkin**  
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Date Filed	#	Docket Text
04/13/2004	•1	NOTICE OF REMOVAL by Metro Corp. from Worcester Superior Court, case number 04-0171A. \$ 150, receipt number 55227, filed by Metro Corp..(Filo, Jennifer) (Entered: 04/14/2004)
04/13/2004	•	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Alexander. (Filo, Jennifer) (Entered: 04/14/2004)
04/14/2004	•2	Assented to MOTION for Extension of Time to May 3, 2004 to File Response/Reply to <i>Amended Complaint</i> by Metro

		Corp..(Plotkin, David) (Entered: 04/14/2004)
04/15/2004	•	Judge Nancy Gertner : Electronic ORDER entered granting <u>2</u> Motion for Extension of Time to File Response/Reply Responses due by 5/3/2004 (Filo, Jennifer) (Entered: 04/15/2004)
05/03/2004	• <u>3</u>	Joint MOTION for Extension of Time to 06/02/04 to File Answer to <i>Amended Complaint</i> by Metro Corp..(Bertsche, Robert) (Entered: 05/03/2004)
05/04/2004	•	Judge Nancy Gertner : Electronic ORDER entered granting <u>3</u> Joint Motion for Extension of Time to Answer Metro Corp.. (Filo, Jennifer) (Entered: 05/04/2004)
05/10/2004	• <u>4</u>	Judge Nancy Gertner : ORDER entered REFERRING CASE to Magistrate Judge Joyce London Alexander Referred for: Pretrial Proceedings(Filo, Jennifer) (Entered: 05/10/2004)
05/26/2004	• <u>5</u>	MOTION to Transfer Case to the Central Division of the District of Massachusetts in Worcester by Stacey Stanton. (Filo, Jennifer) (Entered: 06/01/2004)
06/02/2004	• <u>6</u>	Assented to MOTION for Extension of Time to 6/4/04 to File Answer to <i>Amended Complaint</i> by Metro Corp..(Bertsche, Robert) (Entered: 06/02/2004)
06/06/2004	• <u>7</u>	MOTION to Dismiss by Metro Corp..(Bertsche, Robert) (Entered: 06/06/2004)
06/06/2004	• <u>8</u>	MEMORANDUM in Support re <u>7</u> MOTION to Dismiss filed by Metro Corp.. (Bertsche, Robert) (Entered: 06/06/2004)
06/07/2004	• <u>9</u>	Opposition re <u>5</u> MOTION to Transfer Case filed by Metro Corp.. (Bertsche, Robert) (Entered: 06/07/2004)
06/08/2004	• <u>10</u>	Assented to MOTION for Extension of Time to 6/7/04 to File Answer to <i>Amended Complaint</i> by Metro Corp..(Bertsche, Robert) (Entered: 06/08/2004)
06/14/2004	•	Judge Nancy Gertner : ELECTRONIC ORDER entered granting <u>5</u> Motion to Transfer Case: Plaintiff has filed a motion to transfer this case to the Central Division of Massachusetts. Plaintiff argues that the case was wrongfully removed by defendant to the Eastern District, since it was originally filed in state court in Worcester. Under Local Rule 40.1, unless a case falls into one of several enumerated categories of cases, it may be filed "in the division chosen by

the plaintiff." Local Rule 40.1(D)(2) Here, the facts of the case do not put it within any of the enumerated categories of Local Rule 40.1(D)(1), and plaintiff has chosen the Central Division. Therefore, under the Local Rules this case should have been removed to the Central Division. Defendant argues that such a reading of Local Rule 40.1 requires this Court to place a local rule in direct contradiction with the express terms of a federal statute, 28 U.S.C. s. 101, which states that Massachusetts comprises one judicial district with no divisions. That is not the case. It is indisputable that the District Courts of Massachusetts have the power under 28 USC s. 2071(a) to "prescribe rules for the conduct of their business." The District Courts of Massachusetts have chosen to create rules for the assignment of cases which give deference in some cases to a plaintiff's forum choice. This is one of those cases. Defendant's argument that inertia leaves the case in the Eastern District unless "good cause" is shown to remove it to the Central District is misplaced. The case should be transferred to Worcester because it should have been removed there in the first place, not because of convenience or some other factor. Similarly, defendant misses the mark with its argument in the alternative that this Court should, under Local Rule 40.1(F) transfer the case to the Eastern District for "good cause," because Metro Corp.'s Massachusetts office is in Boston. While this Court is skeptical that "good cause" exists to override plaintiff's choice of forum and transfer the case to the Eastern District, that is a question for the Central Division judge to whom this case should be assigned. Plaintiff's motion to transfer to the Central Division of the District of Massachusetts is therefore GRANTED. (Gertner, Nancy) (Entered: 06/14/2004)

06/14/2004	<input checked="" type="radio"/>	Case no longer referred to Magistrate Judge Joyce London Alexander. (Filo, Jennifer) (Entered: 06/16/2004)
06/16/2004	<input checked="" type="radio"/> 11	Judge Nancy Gertner : ORDER entered (Filo, Jennifer) (Entered: 06/16/2004)
06/16/2004	<input checked="" type="radio"/>	Case transferred to Worcester Section; (Filo, Jennifer) (Entered: 06/16/2004)
06/21/2004	<input checked="" type="radio"/> 12	ASSENTED TO MOTION for Extension of Time to July 20, 2004 to File Response/Reply as to <u>7</u> MOTION to Dismiss by Stacey Stanton.(Jones, Sherry) (Entered: 06/22/2004)

06/22/2004	●	Case transferred in from Boston Division. Case Number 04-10751. Case assigned to Judge F. Dennis Saylor, IV. (Shattuck, Deborah) (Entered: 06/22/2004)
06/29/2004	●	Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>12</u> Motion for Extension of Time to File Response/Reply re <u>7</u> MOTION to Dismiss Responses due by 7/20/2004. "ALLOWED." (cc/cl) (Jones, Sherry) (Entered: 06/29/2004)
06/29/2004	●	Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>6</u> Motion for Extension of Time to Answer Metro Corp., granting <u>10</u> Motion for Extension of Time to Answer Metro Corp.. (cc/cl) (Castles, Martin) (Entered: 06/29/2004)
07/21/2004	● <u>13</u>	Opposition re <u>7</u> MOTION to Dismiss filed by Stacey Stanton, c/s. (Hassett, Kathy) (Entered: 07/21/2004)
07/21/2004	● <u>14</u>	MEMORANDUM Of Law in Opposition re <u>7</u> MOTION to Dismiss filed by Stacey Stanton, c/s. (Hassett, Kathy) (Entered: 07/21/2004)
12/01/2004	●	NOTICE OF HEARING: Set Deadlines as to <u>7</u> MOTION to Dismiss. Motion Hearing is set for Thursday 1/6/2005 at 11:00AM in Courtroom 2 before Judge F. Dennis Saylor IV. (cc/cl) (Castles, Martin) (Entered: 12/01/2004)
12/31/2004	● <u>15</u>	MOTION to Transfer Case to <i>Eastern Division of District of Massachusetts</i> by Metro Corp..(Serino, Amy) (Entered: 12/31/2004)
12/31/2004	● <u>16</u>	MEMORANDUM in Support re <u>15</u> MOTION to Transfer Case to <i>Eastern Division of District of Massachusetts</i> filed by Metro Corp.. (Serino, Amy) (Entered: 12/31/2004)
12/31/2004	● <u>17</u>	AFFIDAVIT in Support re <u>15</u> MOTION to Transfer Case to <i>Eastern Division of District of Massachusetts</i> by Jon Marcus. (Serino, Amy) (Entered: 12/31/2004)
12/31/2004	● <u>18</u>	NOTICE of Appearance by Amy E. Serino on behalf of Metro Corp. (Serino, Amy) (Entered: 12/31/2004)
01/05/2005	●	Set/Reset Deadlines as to <u>15</u> MOTION to Transfer Case to <i>Eastern Division of District of Massachusetts</i> , <u>7</u> MOTION to Dismiss. Motion Hearing set for 1/18/2005 11:00 AM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 01/05/2005)

01/14/2005	•19	Assented to MOTION for Leave to File <i>Reply</i> by Metro Corp.. (Bertsche, Robert) (Entered: 01/14/2005)
01/14/2005	•20	REPLY to Response to Motion re <u>7</u> MOTION to Dismiss filed by Metro Corp.. (Bertsche, Robert) (Entered: 01/14/2005)
01/18/2005	•21	Opposition re <u>15</u> MOTION to Transfer Case to <i>Eastern Division of District of Massachusetts</i> filed by Stacey Stanton, c/s. (Hassett, Kathy) (Entered: 01/18/2005)
01/18/2005	•22	MEMORANDUM OF LAW in Opposition re <u>15</u> MOTION to Transfer Case to <i>Eastern Division of District of Massachusetts</i> filed by Stacey Stanton, c/s. (Hassett, Kathy) (Entered: 01/18/2005)
01/18/2005	•	Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Motion Hearing held on 1/18/2005 re <u>15</u> MOTION to Transfer Case to <i>Eastern Division of District of Massachusetts</i> filed by Metro Corp.,, <u>7</u> MOTION to Dismiss filed by Metro Corp.,, Atty. Donohue present for pltf., Attys. Bertsche and Serino present for the deft. After hearing, both motions taken under advisement. Deft. to file supplemental memo on or before 1/24/05; pltf. to file on or before 1/28/05. (Court Reporter Marianne Kusa-Ryll.) (Shattuck, Deborah) (Entered: 01/18/2005)
01/26/2005	•	Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>19</u> Motion for Leave to File reply. (Castles, Martin) (Entered: 01/26/2005)
01/26/2005	•23	Supplemental MEMORANDUM in Support re <u>7</u> MOTION to Dismiss filed by Metro Corp.. (Bertsche, Robert) (Entered: 01/26/2005)
02/01/2005	•24	PLAINTIFF'S POST ARGUMENT RESPONSE to Defendant's Motion re <u>7</u> MOTION to Dismiss filed by Stacey Stanton. (Hassett, Kathy) (Entered: 02/01/2005)
02/10/2005	•26	NOTICE of Withdrawal of Appearance filed by Thomas L. Douglas. (Filo, Jennifer) (Entered: 02/16/2005)
02/14/2005	•25	NOTICE of Withdrawal of Appearance Attorney Thomas L. Douglas terminated. (Bertsche, Robert) (Entered: 02/14/2005)
03/07/2005	•27	Judge F. Dennis Saylor IV: Electronic MEMORANDUM AND ORDER entered granting <u>7</u> Motion to Dismiss. (Castles, Martin) (Entered: 03/07/2005)

03/07/2005	(28)	Judge F. Dennis Saylor IV: Electronic MEMORANDUM AND ORDER entered denying <u>15</u> Motion to Transfer Case. (Castles, Martin) (Entered: 03/07/2005)
03/08/2005	(29)	Judge F. Dennis Saylor IV: Electronic ORDER entered. ORDER DISMISSING CASE.(Castles, Martin) (Entered: 03/08/2005)
04/06/2005	(30)	NOTICE OF APPEAL as to <u>29</u> Order Dismissing Case by Stacey Stanton. \$ 255, receipt number 404547 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 4/26/2005. (Jones, Sherry) (Entered: 04/06/2005)